

## **REMARKS**

### **PRELIMINARY REMARKS**

Applicant wishes to thank the Examiner for the teleconference on August 21, 2003 with the Applicant's attorney, Thomas S. Kim. During the teleconference, the difference between Cushing and the present invention was discussed without success. Based on the inability to convince the Patent Office that there are patentable differences in the present invention over Cushing, the Applicant responds with the following remarks and amendments, along with Applicant's Rule 131 declaration swearing behind Cushing.

Additionally, Applicant has amended the specification to correctly state the proper priority claim. The present application now correctly relates back to US Serial No. 07/376,380, filed July 6, 1989, as its earliest priority date.

Applicant has fully addressed the outstanding objections and rejections, below. Additionally, the Applicants have canceled claims 11, 12 and 15-17.

### **SWEARING BEHIND CUSHING**

Applicant hereby submits that the present invention was conceived prior to the effective date of Cushing, July 13, 1988, and that Applicant was diligent in his reduction to practice of the same invention; therefore, Cushing should not be considered prior art against the present invention. Applicant claims benefit of an earlier date under Rule 131 based on the chain of parent applications that relates back to US Serial No. 07/376,380, filed July 6, 1989 and that Cushing is a 102(e) reference. Absent Cushing, the cited references, alone or in combination, fail to anticipate or render obvious the present invention.

Applicant first conceived of a personal portable evaporative cooling system as currently claimed in February 1987. The personal portable evaporative cooling system includes a pressurizable container for storing and delivering water, pressurizable by a number of means including a manual piston-type pump. The container is connected to a spray nozzle via a water conduit, and the spray nozzle includes an aperture small enough to emit water in small enough particles to form an evaporative mist. The fluid flow through the conduit is controlled by an on-off valve. A first working prototype was successfully produced in July 1987, with a more cost-

effective prototype produced on February 16, 1989. This is discussed in further detail in the Steve Utter Rule 131 Declaration, attached as Exhibit A, along with copies of documentary evidence, attached as Exhibit B.

Since Applicant's earlier inventive acts predate the effective date of Cushing, Cushing should not be considered prior art and cited against the present invention.

REJECTIONS UNDER 35 USC 102 AND 103 SHOULD BE WITHDRAWN

The remaining claims, claims 5, 7-10, 18-21 and 23 should be allowed because Cushing is no longer available to form the basis of a 102 or 103 rejection and the remaining references fail to disclose or teach all elements of the pending claims. Specifically, the rejection under 102 over Cushing is now moot. Furthermore, the rejection under 103 over Cushing in view of a number of secondary references is now also moot, considering that Cushing was the primary reference.

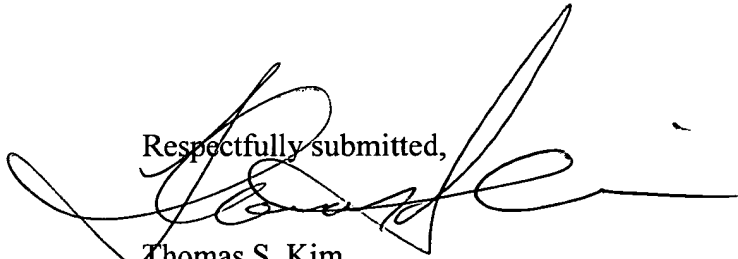
**CONCLUSION**

Based on the arguments, amendments, and the accompanying Steve Utter Rule 131 Declaration (Exhibit A) and Exhibit B, the Applicant submits that all pending claims, claims 5, 7-10, 18-21, and 23 are in condition for allowance. The Applicant respectfully requests that all pending claims be allowed.

This response is filed timely along with the Request for Extension of Time, and the appropriate fees, and the accompanying Request for Continued Examination. Should any additional fee be deemed necessary, however, the Commissioner is hereby authorized to charge any additional fees that may be required, or credit any overpayment, to Rosenbaum & Associates, P.C. deposit account No. 18-2000.

Should the Examiner require any further information or wish to discuss any aspect of this Response, the Examiner is encouraged to telephone the undersigned at the telephone number set forth below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Kim', is written over the typed name 'Thomas S. Kim'.

Thomas S. Kim  
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